

**(UNREDACTED)**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	NO. 13-20067
	)	
ROBERT DREW,	)	
	)	
Defendant.	)	

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LYNN DUDLEY  
OFFICIAL REPORTER  
923-A FEDERAL BUILDING  
MEMPHIS, TENNESSEE 38103

A P P E A R A N C E S

Appearing on behalf of the Plaintiff:

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Appearing on behalf of the Defendant:

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ASSISTANT FEDERAL DEFENDERS

W I T N E S S I N D E XWITNESSPAGE    LINE

NO WITNESSES

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NO EXHIBITS

**THURSDAY MORNING****JULY 24, 2014**

The sentencing hearing in this case began on this date, Thursday, July 24, 2014, at ten o'clock a.m., when and where evidence was introduced and proceedings were had as follows:

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**THE COURT:** Good morning, everyone.

Bring in Mr. Drew, please.

(The defendant is present in the courtroom at 10:14 a.m.)

**THE COURT:** All right. Good morning, everyone.

**MR. ROBERT DREW:** Good morning.

**MS. JERMANN-ROBINSON:** Good morning, Your Honor.

**MR. BIGGERS:** Good morning.

**THE COURT:** For the record, this is the United States versus Robert Drew set today for sentencing.

Memory serves me correctly the matter went to trial and the jury returned verdicts of guilty on all of the counts against Mr. Drew.

1           We are here today to fix the sentence  
2 under the statutes and guidelines and things of that  
3 nature.

4           I need to first ask if both sides are  
5 ready to proceed.

6           Mr. Biggers.

7           **MR. BIGGERS:** Your Honor, the government  
8 is prepared to proceed on today. And I want to make  
9 sure that the court has a copy of the position  
10 paper.

11           **THE COURT:** I've read it.

12           **MR. BIGGERS:** Thank you.

13           **THE COURT:** Ms. Robinson.

14           **MS. JERMANN-ROBINSON:** We're ready, Your  
15 Honor.

16           **THE COURT:** Just for the forward, as I  
17 normally do I like to go through the guidelines as  
18 well as the applicable statutes involved in this  
19 case, that will be our starting point.

20           There are some objections to some of the  
21 provisions in the Presentence Report. As I  
22 indicated, the Presentence Report has been prepared,  
23 both sides have filed position papers. I reviewed  
24 all the material, also gone over the facts of the  
25 case, the notes that I took during the trial, things

1 of that nature.

2 Of course, after we get the guidelines and  
3 the proper statutes in place and all, then we will  
4 proceed with the second phase of sentencing.

5 Although I will note for the record that  
6 the statutes really control, in -- in large part,  
7 the sentences that I can fix, although there is some  
8 flexibility with some of the offenses, you know, the  
9 firearms charges, of course, are controlled by  
10 statute. And, of course, I will hear from both  
11 sides in that regard as we go through.

12 But let me start with going through the  
13 Presentence Report calculations, get our starting  
14 point in place, then I will hear from both sides. I  
15 will hear first from the defense, of course, because  
16 of the objections that have been filed. The  
17 government has no objections, it's my understanding,  
18 but has responded to the objections filed by the  
19 defense.

20 The calculations really begin paragraph 14  
21 of the Presentence Report on page 16. There's  
22 certain groups of calculations that are involved in  
23 this case. There were two actual -- well, attempt  
24 robberies that the defendant was found guilty of on  
25 the same date, two locations roughly 15 to 20 miles

1 apart, if I'm not -- if memory serves me, one of the  
2 attempts occurred in Memphis, the second one  
3 occurred in or near Oakland, Tennessee right along  
4 on Highway 64.

5 Count -- group one, felon in possession of  
6 a firearm, attempt armed robbery of the Hickory  
7 Center Market, you see that on -- on -- in paragraph  
8 14, counts one and three are grouped for guideline  
9 calculation purposes as set out in paragraph 15.

10 Base level offense for this offense and  
11 the section of the guidelines also provides that the  
12 defendant committed any part of the offense  
13 subsequent to having at least two prior felony  
14 convictions, crimes of violence or controlled  
15 substances, then the base offense level is 24.

16 Of course, I believe there's an objection  
17 to this section, we will talk about that shortly.

18 So we start off with a 24 for this group.

19 There are no adjustments either way. And  
20 so the adjusted offense level is 24.

21 Count group two, we see paragraph 22,  
22 carrying, using, brandishing a firearm during and in  
23 relation to a crime of violence, the jury did return  
24 a verdict of guilty on that count. And the  
25 indication was that they found beyond a reasonable



1 doubt that the defendant brandished a weapon during  
2 that offense. And so the sentence is not less than  
3 seven years confinement and up to -- to life and has  
4 to be served consecutive to group three, robbery  
5 affecting commerce, attempt robbery of the Kentucky  
6 Fried Chicken, we see at paragraph 23 the base  
7 offense level for this one is a 20. There are no  
8 adjustments either way in that regard. And so the  
9 adjusted offense level is a 20.

10           And group four, again, using, carrying,  
11 brandishing a firearm during and in relation to a  
12 crime of violence, a robbery in this case, it's an  
13 attempt robbery. Of course, the statute provides  
14 that the sentencing range is not less than 25 years  
15 up to life imprisonment.

16           Then we have the multiple count  
17 adjustments. Okay. We see there the adjusted  
18 offense levels for really group one and group three  
19 for the robberies, one unit for each. That gives us  
20 a total number of units at two. The greater of the  
21 adjusted offense levels is a 24. So you add in the  
22 two you see at paragraph 35 and then -- I'm sorry --  
23 32, gives us a combined adjusted offense level of  
24 26.

25           All that is for naught because in

1 paragraph 34 we see that because of the defendant's  
2 criminal history, he is a career offender. And that  
3 offense level is a 32. Of course, there's an  
4 objection there.

5 Paragraph 35 shows that he is also an  
6 armed career criminal, which is an offense level of  
7 a 34. And I think the higher guideline range is the  
8 one that, under the guidelines, we are to use. And  
9 so the total offense level is a 34.

10 There's no points for acceptance of  
11 responsibility.

12 And as mentioned, the defendant has quite  
13 a few entries on his criminal history. And the sum  
14 and substance of it we see at paragraph 51 on  
15 page 15, criminal convictions that are set out on  
16 the previous pages gives us a criminal history score  
17 of 23.

18 The defendant committed the offense, the  
19 offenses involved in this case while on parole. We  
20 see at paragraph 52 all of the offenses that he was  
21 on parole for. Therefore, two points are added to  
22 his criminal history score.

23 So we have a total criminal history score  
24 of 25. And that gives rise to a Criminal History  
25 Category of VI.

1           And it is an armed career criminal, which  
2 gives us a Criminal History Category of VI anyway.

3           And then for the sentences that we're  
4 looking at, we see paragraph 82 on page 21, counts  
5 one and four the maximum term of imprisonment is 20  
6 years on each of those.

7           Count Two, that was one of the 924(c)'s,  
8 the minimum term of imprisonment is seven years up  
9 to life, as I indicated before.

10          Count Three, the minimum term of  
11 imprisonment because of his criminal history, that's  
12 a 922, possession of the firearm, the minimum term  
13 of imprisonment is 15 years and it's up to life.

14          Count Five, that's the second 924(c)  
15 conviction, 25 years is the minimum and up to life.

16          Paragraph 85, based on the total offense  
17 level of 34, Criminal History Category of VI, that  
18 gives us an imprisonment range for counts one, three  
19 and four of 262 months to 327 months.

20          And then, of course, we have the mandatory  
21 minimum for counts two, three and five that are also  
22 in place, and they are set out in paragraph 86.

23          There's also a question about an  
24 undischarged term of imprisonment. We'll address  
25 that in the regular course, and that is identified

1 and set out in paragraph 88.

2 That's kind of a summary of the decisions  
3 and issues that have to be dealt with today.

4 Am I accurate in that, probation?

5 **THE PROBATION OFFICER:** Yes, Your Honor.

6 **THE COURT:** Did I get it right. All  
7 right.

8 **THE PROBATION OFFICER:** You did.

9 **THE COURT:** Mr. Biggers, anything?

10 **MR. BIGGERS:** Nothing from the government,  
11 Your Honor.

12 **THE COURT:** And, Ms. Robinson?

13 **MS. JERMANN-ROBINSON:** Insofar the  
14 calculations?

15 **THE COURT:** Yes.

16 **MS. JERMANN-ROBINSON:** No -- no problems  
17 with that.

18 **THE COURT:** All right. Let's go ahead and  
19 deal with the objections at this time.

20 And let me hear first from Ms. Robinson.

21 **MS. JERMANN-ROBINSON:** Basically they are  
22 for all purposes of preserving the record, Your  
23 Honor.

24 **THE COURT:** I understand.

25 **MS. JERMANN-ROBINSON:** Our -- our

1 objections A and B, I guess, on paragraphs -- the  
2 convictions shown in paragraphs 43, 48, and I think  
3 those are all simple robberies, meaning they're  
4 robberies, I guess, without a firearm.

5 We have to concede that there is clear  
6 case law that, in fact, they are crimes of violence,  
7 but that case is up on cert. --

8 **THE COURT:** Yeah.

9 **MS. JERMANN-ROBINSON:** -- just for the  
10 record, I would like to preserve that the  
11 convictions in paragraphs 43 and 48, our assertion  
12 is that they are not crimes of violence or violent  
13 felonies, whether it's guideline or by the  
14 statute --

15 **THE COURT:** Right.

16 **MS. JERMANN-ROBINSON:** -- but armed career  
17 criminal.

18 Also, for the record, Your Honor, we  
19 object to the -- to the 922(g) case, the felon in  
20 possession of firearm, that that matter was not --  
21 his prior convictions weren't charged in the  
22 indictment, they weren't proven to the jury.

23 I know that *Almendarez-Torres* is the law  
24 of the land at this point. However, there's several  
25 things that keep percolating -- percolating around

1 and I think in a case like this it's important to  
2 preserve, that should the law change, that perhaps  
3 he would have some benefit there.

4 Also, in line with that is 218 USC 922(g),  
5 I'd say to, Your -- say that statute is void for  
6 vagueness, it's unconstitutional. There's issues  
7 with whether it's a crime of violence, and it's all  
8 over the place. Anytime -- every time the court  
9 comes down, even Sixth Circuit or Supreme Court, we  
10 get surprised by what is and what is not.

11 The question of what is on occasion  
12 separate than one another again is unclear, Justice  
13 Scalia was -- ranted pretty well in one of the most  
14 recent cases about how the court, the police  
15 officers and lawyers don't have much direction  
16 because it's such a vague statute. So I preserve  
17 that, also, for the record.

18 And, lastly, as I actually put it into  
19 other sentencing factors, more under 3553, but since  
20 that doesn't really get me anywhere, I would like to  
21 preserve the fact that Mr. Drew, he is a 67 IQ, and  
22 it has been found that those individuals have an  
23 intellectual disability and those that are  
24 intellectually disabled are treated differently.  
25 And I'm raising and Eighth Amendment objection for

1 the sentences both 18 U.S.C. 922(g) and 18 U.S.C.  
2 924(c) as those sentences that result in the statute  
3 are excessive, cruel and unusual particularly  
4 because we have an intellectual disability for  
5 Mr. Drew, and that's -- and that's in the record and  
6 in the Presentence Report.

7 **THE COURT:** Is that in your position  
8 paper, too.

9 **MS. JERMANN-ROBINSON:** It is.

10 **THE COURT:** All right, thank you.

11 Let me hear now from Mr. Biggers.

12 **MR. BIGGERS:** Your Honor, first,  
13 addressing the objections filed by the defendant,  
14 specifically to the findings that the robbery  
15 convictions of the defendant are violent felonies  
16 for purposes, not only of the guideline  
17 calculations, but also the Armed Career Criminal  
18 Act.

19 The government responded to those  
20 objections in its position, and as the defense  
21 counsel point out, recent case law from the Sixth  
22 Circuit here in 2014 clearly establishes that  
23 Tennessee's robbery statute does constitute a  
24 violent felony for purposes of both the guideline  
25 calculations and the Armed Career Criminal Act.

1           In addition to that, the government will  
2 add that even if the court were not to consider the  
3 two sets of convictions in, I believe in paragraphs  
4 43 and 48, the defendant still has three -- three  
5 other armed robbery convictions that would count and  
6 still qualify him as both an Armed Career Criminal  
7 and would subject him to that enhancement in the  
8 sentencing guideline.

9           Going to the second set of objections, the  
10 defense has brought -- raised today with regard to  
11 922(g), the statute itself, those objections would  
12 not, I don't believe, were not raised in the  
13 defendant's position paper, but as the defense  
14 counsel pointed out the case law is well-established  
15 by both precedent and statute that 922(g)(1) and  
16 922(g) as a whole in Title 18 is constitutional.  
17 And that the government is not obligated to set  
18 forth the prior convictions that would subject the  
19 defendant to the Armed Career Criminal Act and the  
20 indictment.

21           So based on that, Your Honor, the  
22 government submits that those objections, too, must  
23 be overruled.

24           The last -- defendant's last argument,  
25 which I think she stated today as an objection based



1 on his IQ, the government submits that has no  
2 bearing on the calculation itself. And not only  
3 that, but for later argument the defendant is  
4 competent. There is no question as to his  
5 competency. There is no question as to his  
6 competency when he committed the offense for which  
7 he is before the court today and ask that be  
8 overruled as well.

9 **THE COURT:** All right, thank you.

10 Anything further?

11 **MS. JERMANN-ROBINSON:** No, Your Honor.

12 **THE COURT:** All right, thank you.

13 **MS. JERMANN-ROBINSON:** Other than I  
14 believe that Mr. Drew would like to allocute.

15 **THE COURT:** We're -- I mean, he can now  
16 but normally when I go through the sentencing  
17 factors, that's when I hear from them.

18 **MS. JERMANN-ROBINSON:** That's fine, Your  
19 Honor, I couldn't remember.

20 **THE COURT:** Okay. Well, I think as both  
21 of you know, I'm going to have to overrule the  
22 objections that have been set out in the defense  
23 position paper. There's an objection to the use of  
24 and the way that the robbery convictions are used  
25 with regard to Mr. Drew's criminal history, whether

1 or not they are violent offenses for purposes of the  
2 guidelines, and also for purposes of the statutes  
3 involved. Although the objections are made, defense  
4 counsel did make reference to and concede *United*  
5 *States versus Mitchell* 743 F.3rd 1054, it's a Sixth  
6 Circuit case that came out earlier this year, 2014,  
7 robbery is a violent offense as far as the State of  
8 Tennessee is concerned.

9 And so I understand the reason for lodging  
10 the objection. But the objection to use of those  
11 and the way that the convictions are used is going  
12 to have to be overruled.

13 The defense did include in the Presentence  
14 Report an objection because of his IQ. And those  
15 problems, as far as mental capacity are concerned,  
16 are included in the Presentence Report. I've read  
17 those and he was sent, and we will see starting at  
18 paragraph 69 of the Presentence Report, he was  
19 evaluated several times over the years, he was  
20 evaluated at Butner, North Carolina, the federal  
21 correctional institute there, and summary of the  
22 findings is included in the Presentence Report,  
23 which I have reviewed along with the entire report  
24 that was returned.

25 And there's just no issue with regard to

1 his competency. I understand about the -- the IQ  
2 and the finding that's set out in the position paper  
3 at 67, yet we see as part of the analysis that was  
4 made at Butner, because of their interactions with  
5 him, the more appropriate diagnosis for him, I see  
6 at page 19, is characterized by an IQ score within  
7 the range of 71 to 84. Now it's still not, you  
8 know, not huge, but it is somewhat of a difference  
9 from the six -- 67.

10 As far as that being a sentencing factor,  
11 we will take that into account later. But as far as  
12 the calculations are concerned, I don't think that's  
13 an issue. And for those purposes if an objection is  
14 made as far as the calculations are concerned with  
15 regard to his IQ, that will have to be overruled.

16 And so, as I said, in light of the state  
17 of the law as far as his prior convictions are  
18 concerned I will have to overrule the objections and  
19 the outline of the guidelines as well as statutory  
20 provisions with regard to sentencing.

21 Unless there are additional objections  
22 that I have to take up, those will become the  
23 findings of the court.

24 Anything further from the government?

25 **MR. BIGGERS:** Nothing further from the

1 government, Your Honor.

2 **THE COURT:** Okay. And then from the  
3 defense?

4 **MS. JERMANN-ROBINSON:** No, Your Honor.

5 **THE COURT:** All right. Well, I understand  
6 about the objections, they are lodged for the  
7 record, but I have to overrule the objections. And  
8 the calculations that I have outlined will become  
9 the findings of the court as well as the other facts  
10 and calculations involved in the Presentence Report.

11 We're going to go ahead and move to the  
12 next phase of sentencing. And that is the 3553  
13 factors. I do have to review those and take them  
14 into account because of the attempt robbery  
15 convictions that we had, I have a statutory  
16 mandatory minimums as far as the firearms are  
17 concerned.

18 But I will hear from Ms. Robinson now --  
19 I'm sorry -- from Mr. Biggers now with regard to the  
20 sentencing factors.

21 **MR. BIGGERS:** Your Honor, I won't belabor  
22 the point as to sentencing, the court has already  
23 acknowledged that the statute pretty much rules in  
24 this particular case when it comes to sentencing.

25 As the government submitted in its

1 position paper an appropriate sentence in the  
2 particular case is a total sentence of 47 years on  
3 all counts.

4           The government submits that the mandatory  
5 180 month sentence as required on the felon in  
6 possession of a firearm count charged in Count Three  
7 should be run concurrent with the two attempted  
8 robbery counts charged in counts one and four.

9           And the two 924(c) counts which are  
10 required to run consecutive must all run  
11 consecutive.

12           But just -- the government would add that  
13 this particular case before the court dealing with  
14 the defendant Robert Drew is the reasons why  
15 congress implemented the Armed Career Criminal Act  
16 and career offender. The defendants like this, who  
17 have continued to engage in conduct, that not only  
18 endangers the lives of others, but also continues to  
19 put themselves at risk for monetary gain, that's the  
20 basis -- that's the reason that the need for the  
21 Armed Career Criminal Act as well as the career  
22 offender, and the 924(e), that this defendant, in  
23 looking at the facts of this particular case, had a  
24 gun, armed gun, loaded gun, put it in the face of  
25 two innocent victims, two young innocent victims

1 only working to make money, one, Mr. Baker working  
2 at a KFC restaurant here in Memphis, and the other,  
3 Mr. Harris, working at a Hickory Center Market right  
4 at the outskirts of Oakland, Tennessee, and ordered  
5 them to give him money.

6 He was wearing the same clothing, there is  
7 no question the jury already found that the  
8 defendant committed these acts, but he committed  
9 both of these acts and on the same night.

10 That in and of itself is very serious  
11 conduct, very serious conduct that put two different  
12 individuals' lives at stake in addition to the  
13 defendant.

14 Look to the criminal history, or the  
15 history and the nature of the defendant himself,  
16 looking at his criminal history the court would  
17 point out defendant had multiple robbery  
18 convictions, not just simple robbery the defense  
19 pointed out in paragraphs 43 and 48, he had several  
20 other armed robbery convictions.

21 As the court already noted, even based on  
22 the armed robbery convictions, he would still be an  
23 armed career criminal, the armed career -- the armed  
24 robberies in 41, 42 and 44 are the paragraphs in the  
25 Presentence Report. He has a history of robbing

1 people with firearms.

2 He was arrested originally in 1981 for a  
3 series of robberies, for four separate robberies  
4 that occurred between June and July of 1981. Of the  
5 four robberies, three of those were armed robberies.

6 After being taken in custody for that and  
7 being sentenced to a significant sentence, he was  
8 released on parole in 1986, August of 1986. Within  
9 four years he would be -- picked up a new series of  
10 robberies, at least eight separate robberies. That  
11 was in January of 1990. He was taken back into  
12 custody at that point.

13 He escaped from custody in June of 1995.  
14 Within days, I believe a week he was taken back into  
15 custody on that. He was released in April of 2011  
16 and within a year, December of the following year he  
17 picked up these two crimes for which he is before  
18 the court today.

19 Looking at that criminal history, clearly  
20 details how the importance of the 3553(a) factors,  
21 specifically the serious nature of the offense, the  
22 nature and history of the defendant, the need to  
23 promote respect for the law and afford adequate  
24 deterrence.

25 And, lastly, but most importantly in this

1 particular case, the need to protect the public from  
2 the defendant. There's clearly a need to protect  
3 the public from the defendant. And the government  
4 asks that you impose a sentence of 47 years as is  
5 required by statute and supported by the record.

6 **THE COURT:** Thank you, Mr. Biggers.

7 Ms. Robinson.

8 **MS. JERMANN-ROBINSON:** Well, Your Honor,  
9 the court can't really vary from the statute that  
10 controls this, but for the record, no one was  
11 injured in these robberies. The court can take that  
12 into consideration. No money was gotten, the court  
13 can take that into consideration.

14 Mr. Drew obviously has some intellectual  
15 deficits. The case that I cited for the court, the  
16 *Hall versus Florida* case.

17 One other thing that the court mentioned  
18 is that, unlike in *Atkins*, the state of Florida was  
19 using a bright line marker about what an  
20 intellectual disability of 70.

21 And what -- what *Hall* really did bring out  
22 is that there's a standard deviation, five points  
23 one way or the other. And even if 71 is correct,  
24 they could deviate downward five points.

25 So I think that from his record, from



1 what's shown in the Presentence Report that he does  
2 suffer from intellectual disability, and that's  
3 something else the court can consider.

4 This is a life sentence, did congress  
5 intend for this to be a life sentence, I don't think  
6 so, but that is something that the court can take  
7 into consideration.

8 And with reference to -- of course,  
9 Mr. Drew maintains his innocence, as he did at the  
10 trial of this matter, but it seems very clear to me  
11 that there likely was another party involved. It  
12 doesn't come out in the proof, but we did know that  
13 there was some distance to be traveled between the  
14 two establishments. And there was never any proof  
15 about how that distance was traveled. And I just --  
16 I suspect there may have been some pressure put on  
17 the individual that committed these robberies and he  
18 was out in the cold one way or the other.

19 But, again, Mr. Drew maintains his  
20 innocence, there's some unanswered questions. And I  
21 think the court can consider that in determining the  
22 sentence.

23 Again, our hands, mine, yours, are pretty  
24 tied by what the statutes are. So I will just leave  
25 it at that, Your Honor.

1           **THE COURT:** I guess the only flexibility  
2 that I have is the actual sentence to impose for the  
3 attempt robberies.

4           **MS. JERMANN-ROBINSON:** That's -- that's  
5 right, Your Honor.

6           I'd ask the court, seems like 47 is --  
7 well, he's going to die in jail, I mean, that's what  
8 is going to happen unless he's got some kind of  
9 super powers that I'm not aware of. And I think  
10 that's far too much to happen to him for these  
11 botched robberies, for lack of a better word.

12           Again, not taking anything from the  
13 victims, they were frightened, but no money was  
14 taken, no one was hurt, and life sentences were  
15 meant, I think, for individuals who cause more harm  
16 than this.

17           And it appears that the individual who did  
18 commit this was intoxicated, impaired. It doesn't  
19 excuse the crime, but it does say that perhaps these  
20 are not as serious as other robberies.

21           I will leave it at that.

22           **THE COURT:** All right, thank you.

23           Mr. Drew, you do have the right to make a  
24 statement, we call it allocute. But at this time  
25 your lawyer has indicated that you do --

1           **MR. ROBERT DREW:** Yes, sir.

2           **THE COURT:** -- want to make a statement to  
3 the court. If you want to make it, you don't have  
4 to if you don't want to --

5           **MR. ROBERT DREW:** I want to, Your Honor.

6           **THE COURT:** -- but if you want to make a  
7 statement, I will need to place you under oath.

8           **MR. ROBERT DREW:** Yes, sir.

9           **THE COURT:** So why don't you all come  
10 forward at this -- this time to -- to the -- the  
11 podium, and I will hear from you at this time,  
12 Mr. Drew.

13           Okay. Why don't you raise your right  
14 hand.

15           **MR. ROBERT DREW:** Uh-huh, sure.

16           **THE COURT:** Do you solemnly swear or  
17 affirm, under the penalties of perjury, the  
18 testimony that you are about to provide the court in  
19 this matter will be the truth, the whole truth and  
20 nothing but the truth, so help you God?

21           **MR. ROBERT DREW:** Yes, sir.

22           **THE COURT:** All right. You can put your  
23 hand down.

24           Go ahead.

25           **MR. ROBERT DREW:** Your Honor, I'm here

1 today to -- to put this on the record that I left  
2 out during my trial that I wanted to, but my past  
3 history wouldn't allow me to due to the fact that so  
4 many thing's I wanted to say, but today is where I  
5 want to make clear to you, Your Honor, that my past  
6 history, my bank robberies and robberies that I done  
7 in the eighties, Your Honor, everything that I've  
8 done wrong, that I plead guilty to, these two counts  
9 of robbery that was put on me because of my past  
10 record, I -- I disagree with everything because my  
11 thought I already had proved that I wasn't the  
12 robbery when the polices took me to the place, the  
13 scene where the crime at, where you had said  
14 something in court, you said that me and my attorney  
15 was making a big complaint about me standing in --  
16 beside the police car at the scene of the crime  
17 where the crime had happened at.

18           Your Honor, at that night they took me to  
19 the scene of the crime and they zipped up my coat  
20 and everything to make me look more like the person  
21 what we see here because of the fact where the  
22 clothes that I had on, I didn't have no mud on me,  
23 nowhere. My facts is to proof that I didn't have no  
24 mud on me.

25           You look at the video, that coat that --

1 that what they got, that coat don't have mud on it.  
2 The coat that they given me trying to make me look  
3 like the person, there's mud on that coat.

4 Your Honor, I go on to say this here, I  
5 get back to the words of the profession coming from  
6 you that you said that you didn't see where that  
7 made a big difference by me standing in between  
8 those two police with handcuffs on.

9 Your Honor, the fact that that violated  
10 Miranda right to due process because the fact is I  
11 asked them for my attorney to be present with me  
12 because they had already laughed at me for my past  
13 record. Said, well, you -- you had a gun and you  
14 robbed a bank. I said, I never had a gun.

15 So I knew it wasn't the time for me to try  
16 to argue with the polices out there on the -- on the  
17 road where a crime had been committed.

18 So I asked for an attorney and they denied  
19 me. So I moved on from there -- I moved on from  
20 there.

21 But, Your Honor, as far as what I want to  
22 put on the record is that all through the  
23 investigation there's never were they brought up  
24 anything about the white car until April the 24th.

25 And I made it so clear to my attorney, I

1 made it so clear to the U. S. Marshal that said that  
2 he had been on the force for 19 years, I made it so  
3 clear to him at that point that when he came out to  
4 Somerville and picked me up, I told him the same  
5 identical thing I told the police, he said, well,  
6 what are you -- because I had guys in -- I -- I wear  
7 glasses for reading, but my vision is a little bit  
8 off at night, true enough, but the car that I walked  
9 up on I took it for a beige car.

10           And I, and through the investigation, I  
11 won't say nothing here today that's not on record,  
12 and we -- we talked about that with the detective, I  
13 told my attorney about the car. The car -- they  
14 stopped on the side of the road and said this that  
15 is Drew Hindu, I told you what he said, he said  
16 that's Drew Hindu.

17           Somebody called me, and I had been  
18 drinking, true, I had been drinking. As I get to  
19 walk to their car to see the faces of them who said  
20 that's that Drew Hindu, that gun car, so I ran back  
21 off the car. I don't want to get no closer to the  
22 car, I ran back from the car, the car that I said  
23 was a beige car.

24           I couldn't tell them what the license  
25 number, I couldn't tell them, I know there was three

1 guys in there, I know that much, I got that close  
2 enough before the gun car told me for me to get away  
3 from the car, I got that close.

4 But I said all of that to say, Your Honor,  
5 that that was hidden from the court. My attorney  
6 asked that U. S. Marshal here that I -- did he tell  
7 you -- did you do an investigation on him for what  
8 he told you that what had happened. And he said no.

9 Your Honor, that -- for them to put a car  
10 in with me, I thought it was supposed to be affront  
11 to the court that what we're telling with is the  
12 car, because the facts were, if the polices, if  
13 there's a car there at the time that I was there,  
14 what was the reason where the police didn't take the  
15 car under investigation. Because I already had made  
16 my statement. We standed beside the road for 35 or  
17 40 minutes alone in the police car. For what reason  
18 I don't know. Then we went on around to the scene  
19 where the crime at. And Jesse Dodson came out, not  
20 Jesse Dodson -- suggested -- the guy work at the  
21 place, he came out the store, reviewed me and then  
22 he went back in, he went back in and I'm standing  
23 between the two police cars in handcuffs. And he  
24 said that the guy, the coat was like mine.

25 So far he went on to Somerville, Tennessee

1 and said that he don't -- he never said that it was  
2 me but he said it was a coat like mine. He said it  
3 again, and the record would show no different that  
4 what I'm, standing here today saying, and he said it  
5 was a coat like mine.

6 But when we come here on April the 24th,  
7 he said -- would you let the record show he got up  
8 and in court identification saying he identified me  
9 as the victim of the offense. A person who never  
10 came in contact with him period. Never came in  
11 contact.

12 And, Your Honor, just not to hold you up  
13 too long today, I just want to put this on the  
14 record, Your Honor --

15 **THE COURT:** Uh-huh.

16 **MR. ROBERT DREW:** -- that the more face  
17 from the computer was did the 24th here to take a  
18 mask, take -- take -- take a mask off the individual  
19 that on the video and mold my face, Your Honor, let  
20 the record show that that mold face don't look like  
21 my face what you are looking at today. If you look  
22 back through the record and see, that's not my face.

23 And that's a clear that -- so clear  
24 that -- that the right hand of the -- in the video,  
25 there's no glove. Anybody can see there's no glove



1 on that hand.

2           If the person what had their hand, I  
3 thought that is what would have proved my innocence.  
4 A person who have a hand on the gun, I thought would  
5 leave some type of fingerprint on it. But he said  
6 he done so much of a good job for being for 14  
7 years, but he didn't clear himself with  
8 fingerprints. And I was down there watching him  
9 fingerprint. We went outside and we smoked  
10 cigarettes and everything. And he thought that I  
11 may could be able to help him in the situation. But  
12 I couldn't help him in the situation because he  
13 wouldn't come clean. He talked about it on the  
14 radio, and -- and the record will show that he said  
15 that go by my sister's house at 4782, her address,  
16 and check and see whether there was a white car  
17 there, and if there was a white car there, make no  
18 mind and give him a call. I told my attorney about  
19 that earlier in this here.

20           But by doing and reading the bible and  
21 understand, my authorities to rule over me, I'm  
22 going to obey them. There's nothing that I can do  
23 but put the courts upfront that it happened to me,  
24 put this on the record and let it be known, it -- it  
25 was so good thing that, because that I was an

1 ex-convict that showed prejudice against me, not  
2 treat me as the same you would treat anybody else,  
3 to show equal protection of the law, it's proof of  
4 the fact that's the way they done me.

5 My parole officer told me, said the facts  
6 in here that you being up under arrest, says with no  
7 reason them lights wasn't running, when the lights  
8 was running on the police car that my understanding  
9 was telling me they had been filming whatever is  
10 going on. I don't know that much about this, the  
11 police, the security, but that's what she said, when  
12 the lights is on, the camera is on, it's taking  
13 everything. But the camera didn't take up those  
14 guys stood behind that police car for 30 minutes  
15 before they took me to the scene of the crime.

16 The gun never came from up -- the record  
17 would show, if the light would show, the record  
18 would show they never got a gun off Robert Drew  
19 because Robert Drew never had a gun.

20 And -- and also the record would show that  
21 in my eighties time of robberies, Robert Drew never  
22 was carrying a gun. Robert Drew along with the  
23 people with guns, which I was just as much in the  
24 wrong as they were.

25 Also, the record would show that at the

1 time that the crimes and the murders were taking  
2 place, Robert Drew wasn't with the guy. Robert Drew  
3 was the one who turned the guys in.

4 I mean, I'm not trying to make myself a  
5 good guy, because I have committed a crime, but when  
6 I went and done my time for these bank robberies,  
7 I'm not supposed to have do time all over again  
8 because they said that, well, he's capable of doing  
9 anything, he could have done it.

10 Your Honor, I stand here today, I don't  
11 have a health problem, but there's no reason that  
12 anybody could see that I would be able to run from  
13 16 miles in 40 minutes, it would have took me an  
14 hour, almost an hour to walk from that place to my  
15 house, there's no way that -- I couldn't -- it was  
16 impossible.

17 And the car is brought about the fall for  
18 insufficient evidence, I'm through with this for the  
19 day, Your Honor, I don't have anything to say.

20 **THE COURT:** Okay. Thank you, Mr. Drew.

21 **THE MARSHAL:** Stay up here.

22 **THE COURT:** Now you can stay right there.

23 If you all prefer to go back to counsel  
24 table, that's fine, we will get finished.

25 **MS. JERMANN-ROBINSON:** That's fine.

1 Is there a Kleenex, Your Honor?

2 **THE COURT:** Anything further,

3 Ms. Robinson?

4 **MS. JERMANN-ROBINSON:** No, Your Honor.

5 **THE COURT:** Mr. Biggers?

6 **MR. BIGGERS:** Your Honor, briefly.

7 I'm not going to comment on the  
8 defendant's statements other than I believe he  
9 misstated a lot of facts that occurred throughout  
10 the trial.

11 **THE COURT:** I'm familiar with the trial.

12 **MR. BIGGERS:** I just say that for the  
13 record, he misstated a lot of facts, Mr. Harris  
14 never identified him in the courtroom, that is just  
15 inaccurate.

16 But going to Ms. Robinson's argument  
17 before about congress not intending this to be a  
18 life sentence.

19 But for the defendant's extensive criminal  
20 history of robberies, this would not be a life  
21 sentence. He picked up his first robbery when he  
22 was 24 years old. It's only the fact that he  
23 continued until the age of 25 -- of 55 committing  
24 robberies that the sentence of 47 years is  
25 ultimately a life sentence in this particular case.

1           And, furthermore, just add, that that  
2 sentence of 47 years, of 564 months is below the  
3 guideline ranged recommended in this case.

4           **THE COURT:** Okay. All right.

5           Now is the time for me to go ahead and  
6 make the independent determination about the  
7 guidelines involved, impose a sentence with regard  
8 to guideline calculations as well as the statutory  
9 terms that are involved in this case.

10           As with any other case, I'm required to  
11 impose a sentence that is sufficient but not greater  
12 than necessary to accomplish the purpose of the  
13 guidelines, the statutes as well as 3553. And so I  
14 am taking into account everything in making --  
15 making the final decision, the information contained  
16 in the Presentence Report, the evidence that was  
17 presented during the trial as well as the exhibits,  
18 the videos that were included in the trial,  
19 arguments of counsel, statements of Mr. Drew today,  
20 and as always, and in this case the entire record  
21 that is before me.

22           First, I have to take into account and --  
23 and consider the nature and circumstances of the  
24 offenses involved.

25           The two offenses, I have to say are in all

1 of the counts, they are serious offenses. And I  
2 don't make that finding lightly. During the trial  
3 there were videos, what happened in the -- in the  
4 places, and the testimony from the victims involved  
5 about what they did when the robber came in, pointed  
6 the weapon at them, and their efforts to try to  
7 getaway, ultimately not being able to give the money  
8 to the individual and the individual left.

9           And so I don't say it lightly when I say  
10 that these are very serious, most serious crimes.  
11 And the ultimate sentence has to be, has to take  
12 that into account.

13           I also have to recognize and consider the  
14 history and specific characteristics of the  
15 defendant involved in this case. Both sides have  
16 made reference to Mr. Drew's criminal history. He  
17 has made reference to it today in his statement,  
18 admitted that he has done some wrong things, some  
19 bad things, committed some acts in the past doesn't  
20 really understand why that has to, you know, be  
21 taken into account and punished all over again for  
22 that. So he's not really being punished all over  
23 for that.

24           Yet and still, he has a long criminal  
25 history. He really hasn't been on the streets that

1 long because he continues to commit violent offenses  
2 while he is out. And then is re-incarcerated for  
3 significant periods of time.

4 Make reference to paragraph 41, 42, 43,  
5 44, those are the primary ones in the Presentence  
6 Report as set out a huge number of robberies that he  
7 was convicted of over the years.

8 But I also have to take into account  
9 what's happened, the sentences that he got. The  
10 fact that he was released on parole. I just pick  
11 one of them. Paragraph 41, robbery conviction, 15  
12 years sentence, that was in '82, released in '86,  
13 parole was revoked in 1990, and then he was  
14 re-incarcerated.

15 He escaped from custody in 1995. Returned  
16 to custody after about a week or so. Released on  
17 parole in 2011. That parole was revoked in 2013.  
18 And expiration of that sentence actually in June of  
19 this year.

20 But that, I mean, the other paragraphs  
21 that I talked about are very similar. And it just  
22 demonstrates the difficulty in dealing with Mr. Drew  
23 that even being released into the community after  
24 serving portions of the sentence, how he has acted.

25 And so his criminal history, there are

1 counts, and it is being taken into account, but even  
2 beyond the convictions, what he has done when  
3 released into the community is a significant factor  
4 that I have to take into account.

5           There is other information about Mr. Drew,  
6 his -- his personal background and history is  
7 included. I made reference before about his mental  
8 condition and the fact that he was evaluated at  
9 Butner. The results are included, and I have  
10 reviewed all of that information.

11           But as he said, as far as his physical  
12 condition is concerned, there are no issues in that  
13 regard.

14           He was born in Oakland, Tennessee back in  
15 the fifties, 1957.

16           And violence, as demonstrated in paragraph  
17 60, was used by him, involved in his life at an  
18 early age.

19           His family, he has four siblings. And  
20 what has happened with them over the years is  
21 included in the Presentence Report.

22           But he has indicated that he has never  
23 really had a family. At an early age he began  
24 working in the cotton fields. He worked more than  
25 attended school, and he did attend church when he



1 was a child.

2 So I take those type things into account  
3 in making the final decision.

4 He was married at one point with a  
5 Ms. Quarrels, but they divorced a few years after  
6 being married. They have one child as a result  
7 of -- well, he has one child with a relationship  
8 with a different women.

9 And at the time, prior to his  
10 incarceration, he resided with a friend, a Tosha  
11 Jones on Highway 64, Oakland, Tennessee.

12 The probation office spoke with him --  
13 spoke with Ms. Jones, and the information there is  
14 that the defendant is a hard worker, very nice and  
15 sweat person, but then sometimes something comes  
16 over him. I think that's demonstrated accurately  
17 through the information that's presented in the  
18 Presentence Report and the information that I am  
19 taking into account today.

20 As I said, no physical issues.

21 There are some mental issues, but they are  
22 not really defenses, but I do take that into account  
23 in making the final decision.

24 As far as substance abuse is concerned,  
25 there are issues with alcohol. Over the years he's

1    tried marijuana, powdered cocaine and even crack  
2    cocaine.

3               There has been some substance abuse  
4    treatment while incarcerated at a coupled of the  
5    locations and he is interested in receiving  
6    additional treatment.

7               As far as education is concerned, I think  
8    he went Fayette Ware High School for sometime, I  
9    think he completed the eighth grade, did not finish  
10   and hasn't gotten his GED.

11              And there's very little as far as  
12   employment history is concerned.

13              Over the years he has worked in  
14   construction and landscaping, but there's little  
15   employment history because he's been incarcerated  
16   for lengthy periods of time.

17              There is no way that he can pay any type  
18   of a fine.

19              And so now I'm to the point where I have  
20   to impose the sentence. I'm taking all of that into  
21   account in making the final decision as far as the  
22   sentence is concerned.

23              Count One -- well, the reasons for the  
24   sentence, and as the statute says, it has to reflect  
25   the seriousness of the offense. I think I've

1 indicated that the offenses involved are very  
2 serious offenses.

3 Must promote respect for the law. That's  
4 a significant factor that I have to take into  
5 account because there has just been constant and  
6 repeated acts of violence over the years.

7 It has to provide adequate punishment,  
8 that is also an issue.

9 Deterrence is an issue, again, because  
10 there is just repeated instances of violent offenses  
11 over the years.

12 The public has to be protected from  
13 further crimes of Mr. Drew.

14 Understand he maintains his innocence, but  
15 all of that -- many of the things that he said  
16 today, many of the issues that he claims and protest  
17 today were presented to a jury and the jury returned  
18 a verdict -- verdicts of guilty on all the counts.

19 And so I, as far as protection of the  
20 public from further crimes of the defendant, that is  
21 a significant factor that I have to take into  
22 account given his criminal history.

23 And so as to Count One of the indictment  
24 as well as Count Four of the indictment, the attempt  
25 robberies, I will vary from the guidelines and fix

1 his punishment at a hundred and 80 months  
2 confinement, that's 15 years.

3 As far as the 922(g), that's Count Three,  
4 under the statute the minimum is 15 years or a  
5 hundred and 80 months, and that will be the sentence  
6 in that case. That sentence will be run  
7 concurrently with counts one and four for an  
8 effective sentence of 15 years.

9 As far as Count Three of the indictment,  
10 punishment will be fixed at seven years confinement  
11 or 84 months confinement with the Bureau of Prisons.  
12 That has to be swerved consecutively to counts one,  
13 three and four.

14 And, finally, in Count Five of the  
15 indictment, the statutory minimum for that offense  
16 is 25 years. And that will be the sentence in that  
17 case. And it has to be run consecutive to all the  
18 other offenses, counts one through four.

19 Making the effective sentence in this case  
20 47 years confinement with the Bureau of Prisons.

21 That does accomplish all of the factors.

22 It is a sentence that is adequate given  
23 his background and the circumstances of the offense,  
24 it will bring about deterrence of Mr. Drew and  
25 others similarly situated. And it does protect the

1 public from further crimes of the defendant. It  
2 does take into account the seriousness of the  
3 offenses.

4 So that is going to be the sentence.

5 There will be no fine.

6 He does have to pay the one hundred dollar  
7 special assessment for each count of conviction.

8 And as far as supervised release is  
9 concerned, for counts one and four that's three  
10 years of supervised release.

11 For counts two, three, and five, there  
12 will be five years of supervised release.

13 Of course, all of the terms of supervised  
14 release will run concurrently.

15 That's the decision of the court at this  
16 time.

17 Have I left out anything, probation?

18 **THE PROBATION OFFICER:** No, Your Honor.

19 **THE COURT:** As far as supervised release,  
20 I don't know that will ever come into play, but he  
21 is to cooperate with the collection of DNA, drug  
22 testing and treatment under the direction of  
23 probation. Mental health counseling under the  
24 direction of probation.

25 That's the tentative findings of the

1 court.

2 I need to ask if there are any other  
3 objections to the findings of the court with regard  
4 to the sentence.

5 Mr. Biggers?

6 **MR. BIGGERS:** Your Honor, I don't have any  
7 objections. I would like to just make sure I have,  
8 you went over a lot of sentence, I want to make sure  
9 that I have each one of them associated with the  
10 proper count.

11 So correct me if I'm wrong, so we are --  
12 for counts one, three and four 180 month concurrent  
13 sentences with each other.

14 **THE COURT:** Yes.

15 **MR. BIGGERS:** That's for --

16 **THE COURT:** On counts for the 922(g) and  
17 the two attempts.

18 **MR. BIGGERS:** That's correct, Your Honor.

19 **THE COURT:** Okay.

20 **MR. BIGGERS:** Count Two, a consecutive  
21 sentence of 84 months.

22 **THE COURT:** Seven years, 84 months, yes,  
23 consecutive to counts one, three and four.

24 **MR. BIGGERS:** And Count Five, con  
25 secrletary to all the other counts.

1           **THE COURT:** All the other counts, yes.

2           **MR. BIGGERS:** Twenty-five years, or three  
3 months?

4           **THE COURT:** That's right.

5           **MR. BIGGERS:** Thank you, Your Honor.

6           **THE COURT:** Okay.

7           **MR. BIGGERS:** No objection from the  
8 government.

9           **THE COURT:** Ms. Robinson, any additional  
10 objections?

11           **MS. JERMANN-ROBINSON:** No, Your Honor. I  
12 think I put my position that was, by going to trial,  
13 we preserved his right to litigate or appeal the  
14 denial of the motion to suppress that we filed  
15 earlier.

16           **THE COURT:** I understand.

17           **MS. JERMANN-ROBINSON:** So that's --  
18 nothing further, Your Honor.

19           **THE COURT:** Then that will become the  
20 findings of the court.

21           Mr. Drew has the right to appeal the  
22 decisions, the pretrial decisions as well as the  
23 things that happened during trial and sentencing.

24           Assuming he wants to appeal, he will need  
25 to file that notice within 14 days.

1                   **MS. JERMANN-ROBINSON:** Thank you, Your  
2 Honor.

3                   **THE COURT:** Anything further?

4                   **MS. JERMANN-ROBINSON:** No Your Honor.

5                   **THE COURT:** All right, thank you for  
6 coming in today, you all are excused.

7                   **MR. BIGGERS:** Thank you, Your Honor.

8                   (Adjournment at 11:05 a.m.)  
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C E R T I F I C A T E

I, Lynn Dudley, do hereby certify that the foregoing 48 pages are, to the best of my knowledge, skill and ability, a true and accurate transcript from my stenotype notes of the sentencing hearing in on July 24, 2014, in the matter of:

United States of America

vs.

ROBERT DREW

Dated this 2nd day of September 2014.

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Lynn Dudley  
Official Court Reporter  
United States District Court  
Western District of Tennessee